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CHARLES ELMOR

In the Supreme Court of the United States

In Equity

October Term, [redacted] 1936

No. [redacted] 6 Original

THE STATE OF NEBRASKA,
Complainant,

vs.

THE STATE OF WYOMING,
Defendant,

and

THE STATE OF COLORADO,
Impleaded Defendant.

ANSWER OF THE STATE OF WYOMING TO CROSS BILL OF THE STATE OF COLORADO

RAY E. LEE,
Attorney General of the State of Wyoming,
ROBERT R. ROSE,
JAMES A. GREENWOOD,
(SOLICITORS FOR THE STATE OF WYOMING)

LABOR JOURNAL, CHEYENNE

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ANSWER OF THE STATE OF WYOMING TO CROSS BILL OF THE STATE OF COLORADO

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now the State of Wyoming and for answer to the Cross-Bill of the State of Colorado shows the Court:

FIRST.

The State of Wyoming admits that the State of Colorado is one of the states of the Union of the United States of America admitted to and exercising equal sovereignty with the

original and all other states, having all of the privileges, rights and powers which are possessed by or which devolve upon any state, and is charged as parens patriae with the duty of safeguarding and promoting the interests and welfare of its citizens and with the protection of property within its territorial limits.

This defendant admits that the State of Colorado was admitted as one of the states of the Union in 1876, and that when admitted its Constitution contained the following provisions, which ever since that date have been and now are in force and effect:

Section 5, Article 16: "The water of every natural stream, not heretofore appropriated within the State of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided."

Section 6, Article 16: "The right to divert the unappropriated waters of any natural s ream to beneficial uses shall never be denied. Priority of ppropriation shall give the better right as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes."

SECOND.

This defendant admits that the North Platte River has its origin in Jackson County, Colorado, in a basin or valley commonly known as North Park; that said Jackson County has a width of thirty to forty miles and a length, extending southward from the boundary line between the States of Colorado and Wyoming, of approximately fifty miles; that the North Park Basin is drained by several headwater tributaries of the North Platte River, including the Canadian Creek, the Middle Fork North Platte River, and a group of tributaries, including North Fork, Roaring Fork,

Little Grizzly, Big Grizzly, and Big and Encampment Creeks; that the lands of North Park are of high elevation, ranging from 7800 to 9000 feet above sea level; that the Basin is bordered by mountains of high elevation, including the Medicine Bow Range and the Continental Divide; that precipitation concentrates upon these higher mountains; that climatic conditions over the valley floor of the North Park Basin are arid; that normally total precipitation in North Park is less than twelve inches annually and not more than six inches during the season from April to September; that irrigation in North Park is continuously necessary as an aid to agricultural operations; that the growing season is relatively short, averaging about seventy-five days; that the streams in said Basin have a heavy run-off during the six-to-eight weeks period when mountain snows are melting, and that the run-off of said streams thereafter diminishes rapidly; that it is the practice to flood the lands heavily during high water period, applying as much water as is available up to the carrying capacity of the irrigation ditches, and that a part of the water diverted finds its way back into the streams and becomes available for re-diversion and re-use at points farther down stream; but this defendant says that as to what percentage, whether high or otherwise, of the water diverted returns to the streams from which the same is diverted this answering defendant is without knowledge or information.

As to when irrigation was first practiced in North Park in the State of Colorado, the extent and time of the increase of the practice of irrigation and of the use of irrigating ditches, and as to the number of irrigating ditches now in use, and as to how and by whom irrigating ditches in said area were constructed, and as to the manner of the diversion of water from the natural streams, and as to the number and capacity of natural and artificial reservoirs, this defendant is without knowledge or information.

This defendant denies that the aggregate diversion capacity of ditches diverting water from the North Platte River and its tributaries in Jackson County is, or is adjudicated and decreed by the District Court of the State of Colorado to be, approximately 6600 cubic feet of water per second of time, and denies that more than seventy per cent

of the decreed capacity of the ditches in said county are dated prior to September 19, 1904, and denies that more than two-thirds of the total diversions of water are made by ditches under priorities having dates prior to September 19, 1904; and denies that at the present time the total area of the irrigated lands in Jackson County is 143,400 acres and that approximately the same amount of land has been irrigated continuously for more than thirty years last past.

THIRD.

This defendant admits that hay is the principle crop produced in the North Park Basin and that irrigation is practiced in connection with hay meadows along the streams and with the pasture lands adjoining; that irrigation is essential as a necessary part in the livestock producing industry, that the hay crop produced by the irrigation of meadows is essential for the winter feeding of livestock and that the irrigated pasture lands are a necessary part of said livestock operations. As to the number of cattle and the number of sheep maintained in said Basin this defendant is without knowledge or information.

This defendant admits that the State of Colorado is an important livestock feeding state. As to the number of cattle fattened for market and as to the number of lambs fed in said State and as to the relative importance of the State of Colorado in the fattening of lambs for market, and as to the relative importance of northern Colorado in the matter of cattle and lamb feeding operations, and as to the relative importance of Jackson County in the livestock industry in the State of Colorado and the northern section of said State this defendant is without knowledge or information.

FOURTH.

This defendant admits that in addition to the diversions of water in North Park for the irrigation of meadows and pastures therein other and additional quantities of water are diverted from the headwater tributaries of the North Platte River in Jackson County and are conveyed to the head-

waters of the Cache La Poudre River in the State of Colorado and used for the irrigation of lands in the Cache La Poudre River Basin, and that the Cameron Pass Ditch and Michigan Ditch are used in accomplishing such transmountain diversions. And this defendant says that as to the priority of the Cameron Pass Ditch and the quantity of water entitled to be diverted therein, and as to the priority of an extension of said Cameron Pass Ditch and the quantity of water entitled to be diverted therein, and as to the priority of the Michigan Ditch and extensions and as to the amount of water entitled to be diverted therein, this defendant is without knowledge or information. And in relation thereto this defendant avers that in the laws of the State of Colorado there is not and never has been any provision for granting to an appropriation a date of priority by construction, that the date of priority to which an appropriation is entitled is the date upon which the actual construction of the diversion works was undertaken if thereafter diligently prosecuted to completion whereby the same were capable of being used and were used for the actual diversion of water from its natural source and its application to beneficial use.

FIFTH.

This defendant admits that after supplying the water used for the irrigation of lands in North Park, including the transmountain diversions of water out of the said North Park Basin, there remains in the North Platte River and its tributaries in the State of Colorado aside from the Laramie River a quantity of water and a volume of stream flow which crosses the boundary line between the States of Colorado and Wyoming and passes down stream into the State of Wyoming, amounting in the average year to approximately 500,000 acre feet; that the length of the North Platte River from the boundary line between the State of Colorado and the State of Wyoming to the Pathfinder Dam is approximately 180 miles; that the drainage area in the State of Wyoming which is tributary to the said section of the North Platte River is approximately 12,500 square miles; that along the said section of the North Platte River and its

tributaries in the State of Wyoming there is now being irrigated with water diverted from the North Platte River and its tributaries in the said State approximately 180,000 acres of land and that the volume of stream flow as measured out of the Pathfinder Reservoir is approximately 1,300,000 acre feet of water in the average year.

This defendant admits that the Pathfinder Reservoir is a part of a project known as "The North Platte Project" constructed by the United States Department of the Interior, Bureau of Reclamation, under authority of Act of Congress passed in the year 1902 known as the "Reclamation Act"; that the Secretary of the Interior of the United States, on December 6, 1904, made application to the State Engineer of Wyoming for permission to construct the said North Platte Project and the said Pathfinder Reservoir, a part thereof, which said application was granted by the said State Engineer, and the said "The North Platte Project" was assigned a priority date as of December 6, 1904; that included in said application was a right to store water in the said Pathfinder Reservoir in the amount of 1,070,000 acre feet; that said Pathfinder Reservoir was constructed and was completed in the month of June, 1909, and that since its completion it has been operated by the United States Department of the Interior, Bureau of Reclamation. And this defendant avers that the construction of said Pathfinder Dam and the storage of water in said Pathfinder Reservoir was by virtue of permission of the State of Wyoming and under the laws of said State and that under the laws of the State of Wyoming the said State has control of the diversion and use of the water stored in said Reservoir.

This defendant admits that the Guernsey Reservoir, located approximately 200 miles down stream from the said Pathfinder Reservoir, was constructed subsequent to the completion of the Pathfinder Reservoir and was completed in July, 1927, and that the said Guernsey Reservoir has a storage capacity of approximately 71,000 acre feet.

This defendant admits that along the North Platte River between the Pathfinder and the Guernsey Reservoirs quantities of water are received by the North Platte River from its several tributaries in the said section of said River, which together drain an area in excess of 5,000 square miles; that

along the said section of said River and its tributaries approximately 88,000 acres of land are irrigated in the State of Wyoming, and that after supplying the water for the irrigation of such lands there remains in the said North Platte River a quantity of water and volume of stream flow which in the average year is in excess of 1,600,000 acre feet, as measured and recorded at Guernsey, Wyoming.

This defendant admits that a few miles below the Guernsey Reservoir are the headworks and points of diversion of the principal canals of the said "The North Platte Project"; i.e., the Interstate Canal, most of which is located in the State of Nebraska, on the north side of the North Platte River and the Fort Laramie Canal, part of which is located in Wyoming and part in the State of Nebraska and on the south side of said river, and that additional diversions are made for the Northport Canal. As to the exact amount of land irrigated from the Interstate Canal and as to the exact amount of land irrigated from the Fort Laramie Canal and the Northport Canal this defendant is without knowledge or information, and on information and belief alleges the fact to be that the land irrigated from the Interstate Canal is somewhat less than 120,000 acres; that the land irrigated from the Fort Laramie Canal is somewhat less than 90,000 acres and that the land irrigated from the Northport Canal is somewhat less than 16,000 acres and that the total irrigated from all said canals is somewhat less than 230,000 acres.

This defendant admits that in addition to the Pathfinder and Guernsey Reservoirs the North Platte Project includes Lake Minatare and Lake Alice, storage reservoirs with capacities, respectively of 60,000 and 11,000 acre feet; that both said reservoirs are supplied through the Interstate Canal and are the only reservoirs of substantial capacities in the State of Nebraska heretofore constructed and used for the purpose of storing the waters of the North Platte and the Platte rivers in said state.

This defendant admits that under an amendment to the United States Reclamation Act passed in the year 1911, known as the "Warren Act", the United States, through its Department of the Interior, Bureau of Reclamation, entered into contracts with a number of irrigation projects located

along the North Platte River and principally in the State of Nebraska, for the furnishing of an aggregate quantity of water approximating 345,000 acre feet per season for the irrigation of lands in the State of Nebraska. And in reference thereto defendant says that soon after the enactment of the Warren Act and in 1915, and prior thereto, the United States, purporting to act under the authority of the Warren Act, entered into contracts with the owners of canals and appropriations on the North Platte project, which contracts were substantially uniform in character and provide in substance as follows: That the United States would impound and store water in the Pathfinder Reservoir or elsewhere and release the same into the North Platte River at such times and in such quantities as to deliver, and did by said contracts agree to deliver, to the owners of such canals and appropriations, for use on such owners' lands, such amounts of water that would, with all the water that the owners' lands might be entitled to by reason of any appropriations, and with all water not otherwise appropriated including drainage and seepage waters developed by the United States, aggregate a flow according to the schedules of deliveries set out in said contracts. For the purpose of said contracts, September fifteenth was agreed to be the end of the irrigation season. Said contracts contained this further provision: That the delivery thereunder by the United States of the water therein provided for should be in full satisfaction of all rights to which the parties contracting with the United States were or might be entitled under their direct flow appropriations. This defendant says that at all times since the making of said contracts the United States, through its Bureau of Reclamation, has supplied said Warren Act contractors pursuant to the provisions of said contracts with the water so scheduled to be delivered, using for that purpose, for the most part, seepage and other waters developed as return flow from said North Platte Project, that said deliveries as provided for in said contracts have been accepted during all said period of time by said Warren Act contractors in full satisfaction of their claims to the right to use and divert any of the waters of the North Platte River, and that said contractors, ever since the execution of said contracts, have relied thereon solely for their water supply without using or relying upon any direct flow appropriations, which appropriations, by

non-user for a period of more than fifteen years, have been abandoned and forfeited. And this defendant says that as to the dates of said contracts it is without information.

SIXTH.

This defendant admits that the Laramie River is a tributary of the North Platte River; that it originates in the State of Colorado and has its confluence with the North Platte River in eastern Wyoming below the Guernsey Reservoir; that the waters of the Laramie River are claimed for the irrigation of approximately 4250 acres of land located in the State of Colorado, and this defendant avers that the amount of water to which the claimants are entitled for the irrigation of said 4250 acres does not exceed 4250 acre feet of water annually. This defendant admits that additional quantities of water are claimed by the State of Colorado for diversion from the Laramie River basin in Colorado for use upon lands along the Cache La Poudre River in said state, and avers that the amount of water to which the claimants in Colorado are entitled for such diversion does not exceed 35,500 acre feet annually. And this defendant admits that after diversions and uses in this paragraph mentioned are accomplished there remains in the said Laramie River a considerable quantity of water and a considerable volume of stream flow, and avers that in the average year the same is considerably less than 150,000 acre feet, and admits that such quantity of water and volume of stream flow leaves the State of Colorado and enters the State of Wyoming.

This defendant admits that in the State of Wyoming the stream flow in said river is augmented by contributions received from tributaries thereof in said state and that the said flow is used for the irrigation of approximately 188,000 acres or more of land in the State of Wyoming.

This defendant admits that on May 29, 1911, the State of Wyoming, the defendant herein, filed an original proceeding in equity in this honorable Court against the State of Colorado; that this Court, upon the pleadings and proof taken in said cause did, on June 5, 1922, render its opinion and entered its decree reported in the 259th U. S. Reports at page 496, and thereafter on October 9, 1922, entered its modified decree reported in 260th U. S. Reports at page 1;

that this honorable Court, by said decree, as so modified, apportioned, decreed and adjudged the rights of the State of Wyoming and the rights of the State of Colorado in and to the waters of the Laramie River, and that by the terms of said decree all the waters of the Laramie River were and are fully and completely divided and apportioned between the State of Wyoming and the State of Colorado.

SEVENTH.

This defendant admits that below the point of diversion of the Interstate Canal and of the Fort Laramie Canal of the North Platte Project there remains in the North Platte River after the said diversions have been accomplished, a large quantity of water and volume of stream flow; and avers that in the average year the same amounts to more than 1,100,00 acre feet. This defendant admits that the said volume of stream flow is further augmented by tributary contributions, including those made by the Laramie River in the State of Wyoming and smaller contributions in the State of Nebraska, and is further augmented by quantities of water reaching said North Platte River as a result of precipitation upon the lands within the basin of the North Platte River and by return flow resulting from irrigation of lands with waters diverted from said river. This defendant admits that the distance by way of the North Platte River from Guernsey, Wyoming to North Platte, Nebraska, is approximately 245 miles; that the drainage area tributary to this section of the said river is in excess of 14,400 square miles; that the aggregate area of the lands irrigated along the said section of the North Platte River between Guernsey, Wyoming and North Platte, Nebraska with water diverted from the said river and its tributaries, exclusive of the lands irrigated from the Laramie River, is approximately 380,000 acres; that a large portion of said acreage is located in the State of Nebraska; and that after all the said diversions of water from the North Platte River have been made and accomplished there remains in said river at the city of North Platte, Nebraska, a quantity of water and volume of stream flow exceeding in the average year 2,000,000 acre feet.

EIGHTH.

This defendant admits that along the Platte River from North Platte to Grand Island, Nebraska, not more than 110,000 acres, and avers that considerably less than that amount, has heretofore been irrigated, and admits that from Grand Island to Plattsmouth, Nebraska, not more than 1000 acres has been irrigated; and admits that tributary contributions to the Platte River below North Platte, Nebraska are such that the quantity of water and volume of stream flow in the Platte River in the vicinity of Grand Island are in excess of 2,400,000 acre feet and amount to not less than 2,650,000 acre feet annually.

NINTH.

This defendant admits that contrary to the fundamental principles of reclamation by means of irrigation, and in violation of the public interests in the water resources of the Platte River, quantities of water in excess of 2,000,000 acre feet normally flowing in the North Platte and Platte Rivers in the State of Nebraska have heretofore been and are now being permitted to go to waste without serving any beneficial purpose; that the quantities of water and volumes of stream flow in the Platte River are now and for many years last past have been greatly in excess of the needs of the appropriators along said river and greatly in excess of the volume of waters which can or could be put to beneficial use by said appropriators, and that the duty of constructing and operating reservoirs to conserve the said waters for beneficial use does now and at all times in the past has rested upon appropriators in the State of Nebraska who might desire or need to use the said waters and who might assert a claim thereto.

TENTH.

This defendant admits that within the Platte River basin there is a wide range of topographical, geological, climatological and other natural conditions giving rise to variations in agricultural practices and to differences in the nature and extent of the needs for irrigation as an aid to agricultural and livestock operations, and that in the large area and great length of the Platte River drainage basin there are climatic zones ranging from arid conditions in

the extreme western portions of the basin to typically humid conditions in the eastern portion thereof.

This defendant admits that Colorado and Wyoming are in the arid regions; that the annual and seasonal precipitation and quantity of rainfall occurring at points along the North Platte River in Colorado, Wyoming and Nebraska, and along the Platte River in Nebraska are approximately, though not exactly, as set out in the Tenth Section of Colorado's cross bill, and that in Colorado and Wyoming the practice of irrigation is continuously needful and is necessary to the reclamation, occupation and use of all lands in said States, which lands without irrigation would remain largely, if not wholly, unproductive, unoccupied and unused.

This defendant admits that the amount of annual precipitation increases to the eastward and in the State of Nebraska increases from approximately sixteen to eighteen inches at the western boundary of said state to approximately twenty-four to thirty-four inches or more at the eastern boundary thereof.

This defendant admits that the lands of the State of Nebraska are divided by natural climatic conditions into three more or less well-defined zones; that the type of irrigation and the extent to which irrigation is practiced or needful is governed, among other things, by conditions peculiar to the different sections within each of said climatic zones; that the State of Nebraska is one of the sub-humid states; that strictly arid conditions, if they prevail at all in said state, are limited to the extreme western counties thereof.

This defendant admits that the humid zone in the State of Nebraska embraces all the eastern and central portions of said state along the basin of the Platte River from its confluence with the Missouri River to the vicinity of the city of Grand Island; that in said zone the natural precipitation is ordinarily sufficient in amount and so favorably distributed throughout the year that crop diversification and excellent crop yields are possible without the aid of irrigation and that irrigation in said zone has not been and is not practiced to any extent worthy of note and has not been and is not required for the successful carrying on of agricultural pursuits.

This defendant admits that in the sub-humid zone of the State of Nebraska extending from the general vicinity of the city of Grand Island westward to the arid or semi-arid

counties of the State of Nebraska, agriculture without the aid of irrigation is generally practiced with such success that farmers have been inclined to avoid the work and expense incidental to irrigation.

This defendant admits and avers that varying conditions and varying needs for irrigation along the Platte River in Nebraska and the North Platte River in Nebraska, Wyoming and Colorado create fundamental differences in the character of the claims of the three states in and to the flow and the use of the waters of said rivers.

ELEVENTH.

As to whether, in connection with the agricultural lands situate along the Platte River in Nebraska, attempts have heretofore been made from time to time to provide for irrigation of some of said lands, and as to whether schemes have been conceived and projects initiated during periods of drouth, this defendant is without knowledge or information. And this defendant admits that many of said schemes and projects, if any there were, have subsequently been abandoned without having attained a stage of effective operation. And defendant says that as to whether any of such schemes, if any there were, have been revived, and as to whether any of such projects, if any there were, have been rehabilitated, and as to whether during recent years because of precipitation conditions or otherwise there has been a revival of interest among the citizens of Nebraska in the matter of irrigation of lands along the Platte River, this defendant is without knowledge or information. This defendant admits that at the present time an extensive development program is proposed by Nebraska citizens and is now under way and that said program involves, among other things, the construction of a number of storage reservoirs, the providing of regulated supplies of water to be taken from the North Platte and the Platte Rivers for the irrigation of lands in the North Platte and the Platte basin, and that said plan contemplates the irrigation of lands located principally in the counties of Phelps, Kearney and Adams in the State of Nebraska and in the humid and sub-humid portions thereof, which said lands have not heretofore been irrigated.

This defendant admits that the said program is going forward and construction work is proceeding with funds of the Federal Government to be repaid, at least in part, by the profits from the sale of electric energy proposed to be generated by the diversion and use of water from the North Platte and the Platte Rivers in the State of Nebraska.

This defendant admits that as evidenced by the said present and contemplated plans for irrigation, the State of Nebraska and its citizens have for a long time past known of the existence of large quantities of unused water and large volumes of surplus stream flow in the Platte and the North Platte Rivers and admits further that the claims upon the waters of the Platte and North Platte Rivers now sought to be asserted by the plaintiff are of such inherently different character as to be not properly comparable with the claims of the citizens of the State of Colorado in and to portions of the waters of said rivers, and defendant avers that such claims are not comparable with the claims of the citizens of this defendant.

TWELFTH.

This defendant admits that a part of the surplus and unused waters of the Platte and the North Platte Rivers in Nebraska originate in Jackson County, Colorado; that said county is separated from the State of Nebraska by a distance of approximately 430 miles, measured by the course of the North Platte River; that the time required for water in the North Platte River after it leaves Jackson County, Colorado, to reach Nebraska varies with the volume of stream flow and is sometimes as much as two to three weeks; and that climatic conditions and rainfall in the watershed of the North Platte River above the Wyoming-Nebraska line, and other conditions including changes in temperature, wind movements, bank storage and rates of evaporation, cause wide variations in the volume of flow of said river and that said climatic conditions and changes therein cannot be forecast or anticipated with certainty or accuracy.

This defendant admits and avers that by reason of such physical circumstances and climatic conditions and changes therein the distribution of the water of the North Platte River as between individual appropriators in Jackson County and individual appropriators in Nebraska upon a

schedule of priority dates and quantities of water assigned to appropriators would further augment the surplus and unused quantities of water flowing in the Platte and the North Platte Rivers in Nebraska and would further increase the lost and wasted portions thereof; and this defendant avers that the length of the North Platte River from its headwaters to the Wyoming-Nebraska state line and points downstream therefrom, and the difficulty incident thereof of the administration of the waters of said stream in Colorado, Wyoming and Nebraska would further contribute to increase the lost and wasted portions of the waters of said river. This defendant admits that the distribution of waters between groups of appropriators in Jackson County, Colorado and groups of appropriators in Nebraska upon a schedule of deliveries of water at the interstate line between Wyoming and Nebraska would, for the reasons set out in the Twelfth Section of Colorado's Cross-Bill and herein admitted, increase the volume of water now being wasted in the State of Nebraska; and this defendant avers that if proper and practical control and storage facilities are constructed in Nebraska there will be more than sufficient water available to satisfy the requirements of Nebraska and its citizens for the beneficial use of the waters of the North Platte and the Platte Rivers in said state with less flow in the natural channel of said rivers than now is permitted to pass through said channel unused and wasted.

This defendant admits that the State of Colorado is entitled to make use of an equitable portion of the surplus waters of the North Platte River in that state, if any there be, to provide for its future needs and insure the future prosperity of its citizens; and this defendant avers that there are no waters in the North Platte River in Colorado available for diversion out of the drainage basin of said river and that the State of Colorado is not equitably entitled to the diversion of any such waters. This defendant avers further that neither the State of Colorado nor the State of Nebraska, nor the State of Wyoming, has a right to make use of any of the waters of the North Platte River to which either of the other states is equitably entitled.

THIRTEENTH.

This defendant admits that acting under plans recently adopted by the State of Wyoming and the United States Department of the Interior, Bureau of Reclamation, there is now being constructed upstream from the previously constructed Pathfinder Reservoir the Seminoe Reservoir with a capacity of substantially 1,000,000 acre feet and to impound unused portions of surplus North Platte River flow and waters flowing in said river in seasons of high precipitation; that the said Seminoe Dam is being constructed as a Federal project with funds advanced by the Federal Government without obligation on the part of users of waters stored therein to pay therefor, the cost of construction to be paid by the sale of power generated by means of said dam and reservoir.

This defendant denies that any portion of the benefits to be derived from the use of waters stored in the Seminoe Reservoir should be allocated to the State of Colorado.

FOURTEENTH.

This defendant admits that plans have been developed by the State of Wyoming and the United States Department of the Interior, Bureau of Reclamation, for the construction of an irrigation project known as the Casper-Alcova Project, to irrigate many thousands of acres of land in the vicinity of Casper, Wyoming, by the utilization of water to be made available by the construction of the Seminoe and the Casper-Alcova Dams and that the cost of constructing the Casper-Alcova Project is to be borne by the Federal Government and approximately one-third of such cost to be repaid by the users of water therefrom upon lands in the vicinity of Casper, Wyoming. And in relation thereto, this defendant says that the plans aforesaid are not of recent development but that on the contrary the said plans now being carried out were formulated at and prior to the construction of Pathfinder Dam and as a condition upon which consent was given by the State of Wyoming to the construction thereof, and that ever since, prior to such construction, surveys and other work looking to the construction of the Casper-Alcova Project have been diligently prosecuted from year to year.

And this defendant says that money greatly in excess of the total cost of the Seminoe and Casper-Alcova Projects

has been contributed to the reclamation fund of the United States Bureau of Reclamation in royalties upon oil produced in the County of Natrona in which the lands to be irrigated from said project are situate.

This defendant admits that the State of Wyoming and its citizens in Natrona County will derive great benefits by the use of North Platte River waters stored in Seminoe and Casper-Alcova Reservoirs and denies that Wyoming will derive any benefits therefrom to which it is not entitled or that an unequal status is thereby being created between the citizens of the State of Colorado and citizens of the State of Wyoming as between appropriators of water from the North Platte River in said states or that an unfair or unreasonably large share of the benefits arising from the flow of the North Platte River will be allocated to and reserved by the State of Wyoming or that the State of Colorado will be in any wise injured by the construction of said project and the use in Wyoming of waters stored therein. And this defendant avers that on the contrary, the construction of said projects and the storage of water in said reservoirs will be greatly to the advantage of the State of Colorado and of the State of Nebraska and of the users of North Platte River waters in both said states.

FIFTEENTH.

This defendant admits that the rights of Colorado and Wyoming and of the citizens of said states in and to the waters of the North Platte River, except the Laramie River tributary thereto, have never been determined. As to whether Colorado has for many years, or at all, planned the diversion of other and additional quantities of water from the North Platte River and the use thereof in the State of Colorado, and as to whether Colorado has for many years, or at all, carried on engineering studies and investigations for the purpose of determining the physical and economic feasibility of such diversions including the diversion of water from the North Platte River and its tributaries in Jackson County, Colorado, and the use thereof upon lands now being irrigated in the basin of the Cache La Poudre River as a supplementary supply of water for said lands, and as to whether Colorado has studied the question of the availability of water supplies in the North Platte River for such diver-

sions and use and as to the amount of water in the North Platte River available for appropriation in Colorado and the amount of such water that would have been made use of by additional diversions, if any, contemplated by Colorado, and as to the number of acres of land in Jackson County, Colorado not heretofore irrigated which are susceptible of irrigation from the North Platte River and its tributaries in said county, and as to the value of any such land if irrigated and the necessity of such irrigation and the extent to which such irrigation of new lands would enhance the value of lands therein now already irrigated, and as to whether a supplementary supply of water is needed for lands now irrigated in the basin of the Cache La Poudre River, this defendant is without knowledge or information. And this defendant says that any trans-mountain diversion of waters of the North Platte River by the State of Colorado into the Cache La Poudre River basin or elsewhere would deprive the State of Wyoming of the return flow of such diverted waters or any part thereof, would result in an unrecoverable loss of a large part of such waters and would be inequitable to this defendant. This defendant further says that no plans for the diversion of North Platte River waters into the Cache La Poudre River basin have ever been definitely formulated by the State of Colorado or any of its citizens, that such plans, whatever they may be, have never advanced beyond the speculative stage, and that if there be need for a supplemental supply of water in the Cache La Poudre River basin such supply can be obtained from other sources in the State of Colorado.

SIXTEENTH.

As to whether the Secretary of the Department of the Interior has refused to grant rights-of-way to Colorado citizens over public lands within said state for the initiation of any irrigation projects, and has refused to approve water rights junior to the year 1904 used in connection with final proof on desert land entries or otherwise, and as to whether such refusals, if any, began shortly after the construction of the North Platte Project and Pathfinder Reservoir and were based upon an alleged fear of encroaching upon a water supply claimed by said Secretary of the Interior for said Pathfinder Reservoir, and as to whether the State of

Colorado has demonstrated such fears, if any there be, to be unjustified and the existence of a surplus unappropriated supply of water in the North Platte River, and that such surplus, if any, was appropriated by citizens of the State of Colorado, and as to whether but for such interference on the part of the Secretary of the Interior of the United States any of the irrigation projects alleged by Colorado to have been contemplated by it and its citizens would have been constructed, this defendant has no knowledge or information.

This defendant denies that the Department of the Interior, Bureau of Reclamation, now proposes or has proposed to utilize any surplus and unappropriated supply of water to which the State of Colorado or its citizens may be entitled as the basis of the water supply for either the Seminoe or the Casper-Alcova Projects, and denies that by any act or acts of the Secretaries of the Department of the Interior any surplus supply of water to which the State of Colorado or its citizens were or are equitably entitled has been unfairly or unjustly attempted to be reserved for the sole benefit of the State of Wyoming, and denies that any injury has resulted or will result to the State of Colorado or its citizens by the storage of North Platte River waters in the Seminoe and Casper-Alcova Reservoirs. And in relation to the respective equitable rights of Colorado and of Wyoming to the use of the waters of the North Platte River and particularly as such rights may be affected, if affected at all, by the construction of the Seminoe and Casper-Alcova projects, this defendant says that the actual construction of the Seminoe and Casper-Alcova Projects was not initiated until about December 1, 1933 and that prior thereto and during all the years from 1904 to the date of the application for the construction of the Seminoe and Casper-Alcova Dams the State of Colorado, with full knowledge of the purpose of the State of Wyoming to secure the construction of said projects, took no actual steps and engaged in no actual construction work looking to the prosecution and completion of any contemplated projects, if any there were, to which the State of Colorado may have previously given consideration or in connection with which it may have made preliminary speculative investigations. And defendant says that to carry said Casper-Alcova Project to completion and to take therefor

from the available water supply of the North Platte River sufficient water to irrigate the lands proposed to be reclaimed under said project will not result in any injury to Colorado or any of its citizens, and will not result in Wyoming's obtaining the use of any more than a portion of her equitable portion of the waters of the North Platte River.

SEVENTEENTH.

This defendant admits that efforts have been made by the States of Colorado, Wyoming and Nebraska, through negotiations conducted by accredited representatives of said respective states, and otherwise, to arrive at a reasonable basis of division of the waters of the North Platte River and that such efforts have not been successful. This defendant denies, however, that it has proceeded or is now proceeding to initiate or to attempt to initiate any claim to the waters of the North Platte River in excess of those to which it is equitably entitled, or such as to encroach upon the rights of the State of Colorado to its equitable portion thereof. This defendant admits that the State of Colorado protested to the Secretary of the Interior and to other Federal authorities against the construction of the Seminoe and Casper-Alcova Projects with funds supplied wholly or in part by the Federal Government. This defendant denies that the construction of said projects, or of either of them, in Wyoming will result in depriving the State of Colorado or any of its citizens of the beneficial use of any portion of the waters of the North Platte to which it or they may be equitably entitled, and avers the fact to be that the State of Colorado is not entitled under any recognized rule or principle of equity to require the State of Wyoming to forego the construction at this time of the Seminoe or the Casper-Alcova Projects, and the application to beneficial use of the waters thereof.

This defendant denies that as a result of the aforesaid protest or otherwise, it was admitted by the public officials of the State of Wyoming that Colorado and its citizens were entitled to any proportion of the surplus waters of the North Platte River and its tributaries and denies that the granting of the permits under which the Casper-Alcova and Seminoe Projects are now being constructed was based upon any such admissions on the part of the State of Wyoming

or upon any understanding as to the right of said State and its citizens to make additional use of such waters. This defendant admits that when application was made for Federal funds for the construction of the Casper-Alcova and Seminoe Projects the State of Colorado protested against the granting of Federal funds therefor, and denies that thereupon or at any time, the State of Wyoming, by either its public officials or other responsible official spokesmen; admitted the right of the State of Colorado or of its citizens to any particular part of the surplus waters of the North Platte River, and denies that such an admission, or any admission on the part of the State of Wyoming was a part of the basis upon which Federal funds were allocated for such construction. And this defendant avers the fact to be that, while no such admissions were made to Colorado as the basis of the right to proceed with construction of the Casper-Alcova Project or the Seminoe Reservoir, it has never been the purpose of the State of Wyoming and is not now its purpose to seek to deny or interfere with the use by the State of Colorado and its citiezns of its and their full equitable share of the waters of the North Platte River. This defendant further avers that the construction, completion and use of the Seminoe Reservoir and the Casper-Alcova Project do not constitute a trespass or infringement upon the equitable rights of the State of Colorado in or to the use of any surplus water of the North Platte River to which the said state and its citizens may be equitably entitled.

This defendant denies that any rights to the use of waters of the North Platte River for projects in addition to those already recognized have been initiated in Colorado or that the State of Colorado or its citizens are entitled to the use of 100,000 acre feet or to any other quantity of water per annum out of the North Platte River in addition to the rights already established and recognized, and deny that the claim of Colorado or its citizens to the use of any such additional quantity of water should be recognized and apportioned as senior and superior to the rights of this defendant for the storage and use of water in connection with the Casper-Alcova Project. And this defendant avers the fact to be that there are not now existing any projects in the State of Colorado which at this time or in the past have obtained a status entitling them to constitute as matter of

law the basis of any actual claim to a right to take and divert any quantity of water from the North Platte River for beneficial use, and that such alleged contemplated projects have never passed beyond a stage purely conjectural and speculative in character and the same are not at this time of such character as to entitle them to consideration by the Court in determining the equitable interest of the State of Colorado in the waters of the North Platte River and in determining the relative rights of the parties to this proceeding.

This defendant admits that it has had knowledge that the State of Colorado has from time to time claimed the right to use waters of the North Platte River in North Park, Jackson County, Colorado, in excess of the waters now used therein and that it has claimed the right to make diversions of North Platte water for use in Cache La Poudre River basin.

EIGHTEENTH.

Defendant says that the State of Wyoming is willing and offers to do full and complete equity with the State of Nebraska and the State of Colorado with respect to the equitable portion of the waters of the North Platte River and with respect to all matters in this proceeding involved.

WHEREFORE, this defendant prays that the Court find and determine the equitable share of the water of the North Platte River to which the State of Colorado and the State of Nebraska and this defendant are respectively entitled; that the prayer of complainant's Bill of Complaint and of defendant State of Colorado's Cross-Bill be denied

except to the extent that this defendant has joined therein, and for such other, further and different relief as to the Court may seem just and equitable.

THE STATE OF WYOMING,
Defendant,

By Ray E. Lee,
Attorney General of the State of Wyoming,

Robert R. Rose,

James A. Greenwood,
SOLICITORS FOR DEFENDANT.

Thomas F. Shea,
Deputy Attorney General,

William C. Snow,
Assistant Attorney General,
OF COUNSEL.

THE STATE OF WYOMING)
)ss.
COUNTY OF LARAMIE)

RAY E. LEE, being first duly sworn, upon his oath, according to law, deposes and says:

That he is the duly appointed, qualified and acting Attorney General of the State of Wyoming; that as such Attorney General he is the duly authorized solicitor and representative of the defendant named in the foregoing Answer to defendant State of Colorado's Cross-Bill; that he has read said Answer and knows the contents thereof, and that the facts therein alleged are true except such facts as are alleged upon information and belief and that as to those facts, said affiant verily believes the same to be true.

RAY E. LEE

Subscribed in my presence and sworn to before me this .....day of July, 1936.

.....
Notary Public.

My commission expires.....

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